

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|                               |   |                 |
|-------------------------------|---|-----------------|
| CITY OF FRANKLIN              | ) |                 |
|                               | ) |                 |
| COMPLAINANT                   | ) |                 |
| V.                            | ) | CASE NO. 92-084 |
|                               | ) |                 |
| SIMPSON COUNTY WATER DISTRICT | ) |                 |
|                               | ) |                 |
| DEFENDANT                     | ) |                 |

O R D E R

This matter arises from the March 4, 1992 filing of a complaint by the city of Franklin naming Simpson County Water District ("Simpson District") as a defendant. Franklin seeks an Order from this Commission "(1) declaring that Franklin had the right and authority to increase its wholesale water rates to Simpson District . . . by Franklin City Ordinance No. 610.5C-6-90 on June 25, 1990 . . . and again by Franklin City Ordinance No. 610.5D-5-91 on May 13, 1991 . . ."; (2) "declaring and imposing on the Simpson District a purchased water adjustment authorized pursuant to 807 KAR 5:068 . . ."; and, (3) "declaring and imposing on Simpson District's retail water rates a surcharge to recover and pay for the increased retail water costs incurred by Simpson District from the date of Franklin's Ordinances. . . ." Franklin alternatively argues that if this Commission has jurisdiction over the wholesale rate charge by Franklin to Simpson District, that the Commission authorize the increase in rates set by ordinance,

and impose a surcharge on Simpson District sufficient to cover revenues lost by Franklin as a result of Simpson District's failure to pay the increased wholesale rates.

Simpson District was directed to satisfy or answer the complaint by Commission Order entered March 17, 1992. Simpson District's answer was filed into the record March 27, 1992. In its answer, Simpson District argues that the Commission should dismiss the complaint or hold it in abeyance pending a ruling by the Kentucky Court of Appeals in which this issue is currently pending. In the alternative, Simpson District requests a formal hearing before the Commission.

It is apparent from the complaint and answer that Franklin instituted service to Simpson District pursuant to a water purchase agreement dated April 5, 1967, as supplemented August 26, 1982 and again April 23, 1986. Since the last contractual revision in 1986, apparently no changes to the water purchase contract have been negotiated. Franklin then sought to increase the rates to Simpson District by enacting the two ordinances referred to above. The 1990 ordinance increased the water rate to Simpson District from \$.8478 per 1,000 (agreed to in the 1986 supplemental water purchase contract) to \$1.3478 per 1,000 gallons; the 1991 ordinance increased the wholesale water rates from \$1.3478 per 1,000 gallons to \$1.68 per 1,000 gallons. From Franklin's complaint it appears that Simpson District has continued to pay the 1986 rate for water purchased and is alleged to be in arrears, owing Franklin \$265,649 (including penalties) for water purchased since July 1, 1990.

On August 26, 1991, Franklin instituted Civil Action No. 91-CI-184, City of Franklin v. Simpson County Water District, in Simpson Circuit Court seeking to void the water purchase agreements and seeking a judgment for the arrearages alleged to be owed by Simpson District. Simpson District then moved to dismiss the complaint for lack of subject matter jurisdiction claiming jurisdiction over the rates charged by Franklin rested exclusively with the Public Service Commission. Franklin objected arguing municipally owned utilities are exempt from PSC jurisdiction pursuant to KRS 278.010(3). On November 12, 1991, Simpson Circuit Court dismissed Franklin's complaint finding, among other things, that jurisdiction over the wholesale water rate charged by Franklin to Simpson District rested exclusively with the PSC. The decision has now been appealed to the Kentucky Court of Appeals, City of Franklin v. Simpson County Water District, No. 91-CA-002675. No decision has been rendered by the Appellate Court. Franklin then filed this complaint.

The pivotal issue for this Commission is whether we have jurisdiction over the rates charged by Franklin. As discussed herein we find we do not.

KRS 278.010(3) defines a utility as any person except a city, who owns, controls or operates or manages any facility used to provide water to the public for compensation. Franklin is an incorporated city in Simpson County, Kentucky, which owns and operates a municipal water plant under the provisions of KRS Chapter 96. As a municipality, the city is specifically exempted from Commission jurisdiction under KRS Chapter 278, thus, the

Commission has no authority to regulate Franklin's rates. The relief requested by Franklin - that the Commission declare Franklin had the right and authority to increase its rates or, alternatively, that Franklin's rate increase be approved - cannot be granted.

Simpson District requests the Commission hold this matter in abeyance pending the outcome of Franklin's appeal. The Commission agrees that no decision affecting the rates charged by Simpson District to its customers should be entered by this Commission until such time as all appeals have been exhausted, however, given the uncertainty regarding the length of time necessary to complete the appeals process, the Commission finds it appropriate to dismiss without prejudice those portions of the complaint dealing with an adjustment to Simpson District's rates.

On May 21, 1992, Franklin filed a motion to compel Simpson District to comply with notice and rate provisions to advise customers that a proceeding affecting the retail rates of Simpson District was pending before the Commission. Franklin further moved the Commission to enter a procedural schedule allowing these issues to be adjudicated on an expedited basis. Inasmuch as the Commission finds that this complaint should be dismissed, the motions should be denied.

After consideration of Franklin's complaint, the answer of Simpson District, and being otherwise sufficiently advised, the Commission finds it lacks jurisdiction over the rates charged by Franklin to Simpson District; therefore, this portion of Franklin's complaint should be dismissed. The Commission further

finds that those portions of the complaint dealing with adjustments in the rates of Simpson District should be dismissed without prejudice to Franklin. Pursuant to the provisions of KRS 278.260(2) a formal hearing is not necessary.

IT IS THEREFORE ORDERED that:

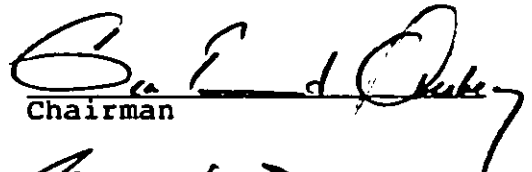
1. The portion of Franklin's complaint requesting approval of Franklin's wholesale rate or, in the alternative, a declaration that Franklin had the right and authority to increase its wholesale rate to Simpson District be and it hereby is dismissed for lack of subject matter jurisdiction.

2. The portion of Franklin's complaint seeking an adjustment in Simpson District's rates through a surcharge and purchased water adjustment filing are hereby dismissed without prejudice to Franklin to refile at the conclusion of the appeals process.

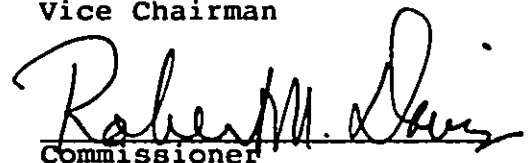
3. The motion of Franklin to compel Simpson District to comply with notice and rate provisions and to set a procedural schedule be and hereby is denied.

Done at Frankfort, Kentucky, this 26th day of May, 1992.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director, Acting